

ENERGYNORTH NATURAL GAS, INC.

**Petition for Approval of Gas Transportation Agreement and
Natural Gas Firm Peaking Agreement with AES Londonderry, LLC
and Approval of Plans for Construction of
Natural Gas Pipeline to Serve AES Londonderry, LLC**

**Order on Motions for Protective Order and Confidential
Treatment**

O R D E R N O. 23,661

March 23, 2001

On July 3, 2000, EnergyNorth Natural Gas, Inc.

(ENGI) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a Petition for Approval of Agreements with AES Londonderry, LLC (AES). In the petition, ENGI seeks approval of a Gas Transportation Agreement and Natural Gas Firm Peaking Agreement with AES in order to proceed with construction of an approximately 2.8 mile natural gas pipeline, along a route previously approved by the New Hampshire Site Evaluation Committee in its Docket No. 98-02, from a take station on the Tennessee Gas Pipeline Company's Concord lateral, in Londonderry, to AES' planned 720 megawatt gas-fired electric generating station on North Wentworth Road in the Town of Londonderry. ENGI also filed a set of plans and specifications for a natural gas pipeline to be constructed by ENGI in order to provide service to AES's facility. ENGI is also seeking authority to utilize a 20-year

depreciation schedule with regard to its capital investment in the project in order to match the 20-year term of the Transportation Agreement.

Concurrent with the original petition, ENGI filed a Motion for Protective Order and Confidential Treatment in which it requested confidential treatment of certain information, pursuant to RSA 91-A:5, IV and N.H. Code of Admin. Rules Puc 204.06 and Puc 204.05(b). The motion requests confidential treatment of certain portions of the Gas Transportation Agreement and the Natural Gas Firm Peaking Agreement. ENGI states that there are three categories of information in ENGI's filing for which ENGI seeks protective treatment: information concerning the cost of construction of the pipeline necessary to serve AES, information concerning the terms on which AES has agreed to provide peaking service to ENGI, and information concerning the financial and related business terms on which ENGI will provide transportation service to AES and other customer-specific information concerning AES.

ENGI states that the bulk of the confidential information relates to the potential cost of construction of the pipeline project planned by ENGI. ENGI avers that release of this information prior to bidding of the design and

construction components of the project would harm ENGI by disclosing to potential bidders the anticipated project costs, making it difficult, if not impossible, for ENGI to achieve potential savings in those costs. ENGI states that the terms on which ENGI obtains its gas supplies are routinely kept confidential by ENGI and are afforded confidential treatment in ENGI's cost of gas proceedings because release of such information could harm ENGI and its customers by harming ENGI's ability to obtain its gas supplies on the best terms possible. In addition, such information is confidential to AES because AES and its affiliates could be harmed in negotiations with other gas utilities if the financial terms of the Natural Gas Firm Peaking Agreement were disclosed. Finally, the remaining confidential treatment information relates to the rates to be paid by AES under the Gas Transportation Agreement and other customer-specific information regarding AES. ENGI is seeking protective treatment of the information at AES's request. As an exempt wholesale generator, AES intends to sell its power at market-based prices in the competitive wholesale electric market. As such, its costs of production, including its fuel costs, are highly confidential and commercially sensitive information, the release of which could damage AES's competitive position

in the marketplace. In addition, the financial analysis provided in the prefiled testimony of Messrs. Mark Savoie and William Luthern would enable competitors of AES and other members of the public to determine customer-specific information regarding AES. Release of the financial terms under which ENGI provides service to AES would also damage ENGI's ability to negotiate the best terms with other potential customers with loads such as that of AES.

On August 1, 2000, ENGI filed a second Motion for Protective Order and Confidential Treatment requesting that the Commission issue a protective order regarding certain documents provided as attached to Data Requests Staff 1-24, 1-25 and 1-26 in this proceeding. These data requests request a calculation of estimated savings that would have been obtained had the Natural Gas Firm Peaking Agreement been in place under certain hypothetical circumstances. As an attachment to ENGI's responses to these data requests, ENGI provided workpapers to show the basis for the information provided in the text of the response. The workpapers include confidential information regarding ENGI's existing gas supply agreement, including the identity of the supplier and the price of the supply. The terms on which ENGI obtains its gas supplies and the source of those supplies are routinely kept

confidential by ENGI and are afforded confidential treatment in ENGI's cost of gas proceedings because release of such information could harm ENGI and its customers by harming ENGI's ability to obtain its gas supplies on the best terms possible.

On August 18, 2000, ENGI filed a third Motion for Protective Order and Confidential Treatment requesting that the Commission issue a protective order regarding a license agreement provided as an attachment to ENGI's supplemental response to Data Request Staff 1-20 in this proceeding. Data Request Staff 2-5 requests a copy of a license agreement between AES Londonderry, LLC and Public Service Company of New Hampshire (PSNH) pertaining to AES' right to cross certain property of PSNH with the transmission main to be constructed from the Londonderry take station of Tennessee Gas Pipeline Company (License Agreement). The License Agreement will ultimately be assigned to ENGI in order to enable ENGI to own and operate the transmission main. Section 13.F of the License Agreement between AES and PSNH provides that the License Agreement is confidential and cannot be disclosed without the consent of the parties. Section 13.F. of the License Agreement makes provision for disclosure of the License Agreement as required in order to obtain the

Commission's approvals related to the AES project. AES has requested that ENGI continue to maintain confidentiality of information regarding the license fee, but has consented to ENGI's providing the License Agreement in response to Staff's data request if covered by an appropriate request for protective order. ENGI has obtained the consent of PSNH to disclosure of the License Agreement.

On September 14, 2000, ENGI filed a fourth Motion for Protective Order and Confidential Treatment requesting that the Commission issue a protective order regarding the revised financial analysis provided as an attachment to ENGI's response to Data Request OCA 1-3 in this proceeding. In response to Data Request OCA 1-3, ENGI prepared a revised financial analysis setting forth certain assumptions regarding property taxes relating to the natural gas pipeline to be constructed by ENGI in the Town of Londonderry to provide service to AES. The revised financial analysis makes certain assumptions regarding the valuation of ENGI property that are more conservative than the original financial analysis, including higher projected property tax estimates. ENGI is concerned that the valuation assumptions might be utilized by taxing authorities to the detriment of ENGI and its customers if they had access to such information.

The information for which protective treatment is sought by the Motions is not general public knowledge or published elsewhere, and ENGI and AES have taken measures to ensure that the information is not disclosed to anyone outside either company or their professional advisors. Release of the information would likely cause financial injury to ENGI and/or AES. Maintaining the confidential nature of the information sought to be protected by these Motions will benefit the public by enabling ENGI to obtain its gas supplies on the most favorable terms possible, and to obtain the most favorable property tax assessments and construction bids possible for the pipeline that will provide service to AES.

In the Settlement Agreement filed in this docket and in DG 00-207, *EnergyNorth Natural Gas, Inc.* , Section 12 stipulated:

The OCA and Staff agree that the Commission should grant KeySpan's Motions for Confidentiality. However, the Settling Parties and Staff further agree that information regarding the estimated cost and actual cost of the pipeline shall remain confidential only until the pipeline is completed and in service.

With regard to ENGI's Motions for Protective Order and Confidential Treatment, the Commission recognizes that the information identified therein is critical to the review by the Commission, the Commission Staff and the Office of Consumer Advocate.

This is the type of information which was anticipated would be protected when N.H. Admin. Rules, Puc 204.06 was adopted. The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. Thus, based on ENGI's representations, under the balancing test we have applied in prior cases, e.g., EnergyNorth Natural Gas, Inc. Order No. 23,656 (March 16, 2001), EnergyNorth Natural Gas, Inc. Order No. 23,160 (March 9, 1999), Re NET (Auditel), 80 NHPUC 437 (1995), Re Eastern Utilities Associates, 76 NHPUC 236 (1991), we find that the benefits to ENGI of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.06. Further, the information regarding ENGI's estimated cost and actual cost of the pipeline construction will remain confidential only until the project is completed and in service.

Based upon the foregoing, it is hereby

ORDERED, EnergyNorth Natural Gas, Inc.'s Motions for Protective Order and Confidential Treatment, as filed on July 3, 2000, August 1, 2000, August 18, 2000, and September 14, 2000 are GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion, the

motion of Staff, any party or any member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary